IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Second Appeal No. 820 of 2001
(Old No. 191 of 1992)

1. Smt. Sushila Devi
   W/o Sri Devi Prasad Dobhal
2. Devi Prasad Dobhal
   S/o Late Sri Hirday Ram Dobhal
   Both R/o Pauri Devprayages
   Motor Road, Pauri Nandalshyun
   District Pauri Garhwal .....Appellants

Vs

1. Nathi Singh S/o Sri Vijai Singh
2. Anand Singh S/o Sri Vijai Singh
   Both R/o Village Baijwari
   Patti Nandlalshyun
   District Pauri Garhwal .....Respondents

Sri Rajendra Dobhal, learned counsel for the appellant

Hon'ble B.C. Kandpal, J.

This second appeal under Section 100 of the C.P.C has been preferred by the appellant against the judgment and decree dated 19.09.1991 passed by Civil Judge, Pauri Garhwal in Civil Appeal No. 14 of 1988 arising out of the judgment and decree dated 29.11.1988 passed by Munsif, Pauri Garhwal in Suit No. 27 of 1986.

2. Brief facts of the case are that the plaintiff/respondent filed a suit before the Munsif, Pauri Garhwal for demolishing the wall and soak-pit constructed by the defendant/appellant in plot No. 2347 and for possession and injunction on the ground that plot No. 2347 area 4 Muthi land is recorded in the name of the plaintiffs and they were in possession of the same. The suit was dismissed by the Munsif, Pauri Garhwal vide judgment and decree dated 29.11.1988.

3. Feeling aggrieved by the aforesaid judgment and decree, the plaintiff/ respondent preferred an appeal before the

appellate court against the aforesaid order passed by the court below. The first appellate court allowed the appeal holding that the lower court committed mistake in deciding an important issue of limitation without pleading and without issue. The appellate court allowed the appeal with costs vide judgment and decree dated 19.09.1991.

4. Feeling aggrieved by the aforesaid judgment and decree, the defendants/appellants preferred this second appeal before the Allahabad High Court, which has been transferred to this Court after creation of separate State.

5. Heard Sri Rajedral Dabral, learned counsel for the appellant on the point of admission and perused the record.

6. Having considered the arguments advanced by the learned counsel for the appellant and after perusal of the evidence on record, I am of the view that, this second appeal is concluded by finding of facts, I, therefore, do not find any ground to interfere in the impugned judgments and orders passed by the lower appellate court. The lower appellate court has recorded justified and proper finding of fact which cannot be interfered at the stage of second appeal. I also do not find any substantial question of law involved in this case.

7. The second appeal lacks merit and is liable to be dismissed.

8. Accordingly, the second appeal is dismissed in-limine

(B.C. Kandapl, J.)

08.12.2006
ASWAL